

Decision 05-03-013 March 17, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy
and Program Coordination and Integration in
Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

OPINION MODIFYING ORDER INSTITUTING RULEMAKING

1. Summary

The April 1, 2004 Order Instituting Rulemaking (OIR) is modified by naming individual Energy Service Providers (ESPs) and Community Choice Aggregators (CCAs) respondents in this proceeding.

2. Background

Decision (D.) 04-01-050, issued in Rulemaking 01-10-024, adopted a policy framework for Resource Adequacy Requirements (RAR) whereby each of the three major California investor-owned electric utilities (IOUs), each ESP, and each CCA (collectively, load-serving entities or LSEs) will be obligated to procure capacity and a reserve margin for their own forecasted load. D.04-01-050 provided for a workshop process to address certain RAR implementation issues, and the April 1, 2004 OIR provided that implementation issues not resolved in R.01-10-024 will be addressed here.

D.04-10-035, the *Interim Opinion Regarding Resource Adequacy* decided in this proceeding on October 28, 2004, addressed various RAR issues that were raised in a workshop report issued on June 15, 2004. Among other things it provided definition and clarification with respect to the RAR policy framework

adopted in D.04-01-050. It also established a second procedural phase (Phase 2) of the RAR portion of this rulemaking, provided for additional workshops in Phase 2, and announced the Commission's intention to implement a functioning RAR program during 2005.

D.04-10-035 expressed the "critical importance" of completing Phase 2 by mid-2005, and it set a target date of September 30, 2005 for the initial round of "year-ahead" RAR compliance filings by all of the LSEs. Upon the issuance of D.04-10-035, the Administrative Law Judge (ALJ) established a preliminary procedural schedule that anticipates completion of Phase 2 with a Commission decision on June 30, 2005. A subsequent ruling by the ALJ on January 7, 2005 confirmed the June 30 target date for a Commission decision.

3. Discussion

D.04-10-035 provides for an assessment of individual LSE load forecasts by the California Energy Commission (CEC). (D.04-10-035, Section 3.4.2, p. 17.) It also requests that the CEC conduct such assessments "well in advance of the September 30 compliance filings by the LSEs." (*Id.*, 18.) The Phase 2 RAR workshops have underscored the need for early submission of load forecast data by LSEs, and they have revealed the need for LSEs to be able to tailor their resource acquisitions to load forecasts that have been reviewed by the CEC.

It now appears that the LSE load forecasts must be submitted well before the target Phase 2 decision date of June 30, 2005. In the absence of such early submission, the ability of LSEs to acquire resources commensurate with their approved load forecasts and make appropriate RAR filings on September 30 could be jeopardized. Ultimately, the Commission's objective to implement a functioning RAR program during 2005 could be jeopardized.

In order to provide the Assigned Commissioner and the ALJ with the requisite authority to direct LSEs to make such submissions, we will modify the OIR to name all LSEs subject to the Commission's jurisdiction respondents to this proceeding. Because the three IOUs were previously named as respondents (OIR, Ordering Paragraph 2), this order will apply to ESPs and CCAs.¹

4. Public Review and Comment

Rule 77.7(e) of the Rules of Practice and Procedure states the following:

“Exemptions. This rule [regarding public review and comment on draft orders] does not apply to ... (ii) an order instituting investigation or rulemaking...”

As this order modifies an order instituting investigation and is solely a procedural order, it is exempt from the requirement for public review and comment. Nevertheless in the interest of maximizing public participation, we have provided for comments on the draft decision under a shortened comment period.

Comments were filed by The Alliance for Retail Energy Markets (AReM); BP Energy Company; the California Independent System Operator (CAISO); Pacific Gas and Electric Company (PG&E); Sempra Global Enterprises (Sempra); Southern California Edison Company (SCE); the Utility Reform Network (TURN); and jointly by the Local Government Commission Coalition, County of

¹ We will serve this order on ESPs using the ESP registry maintained by the Energy Division. The rules for implementing enabling legislation for CCAs (Assembly Bill 117; Stats. 2002, Ch. 838) are still being developed in R.03-10-003, and formal registration of CCAs has not yet been implemented. We will therefore serve this order on parties to R.03-10-003.

Los Angeles, City of Chula Vista, and County of San Francisco (CCA Parties).² CAISO, PG&E, SCE, and TURN support the draft decision. AReM urges rejection of the draft decision. Alternatively, if ESPs are to be named respondents, AReM urges the initiation of a separate proceeding on the grounds that this proceeding is overly broad in scope. BP Energy, a registered ESP that currently serves no load, proposes that it and similarly situated ESPs be excluded from respondent status. BP Energy also recommends a separate proceeding for ESPs. Like AReM, Sempra urges rejection of the draft decision because of the broad scope of this rulemaking. Noting the cooperative participation of ESPs in Phase 2 workshops, Sempra also believes it is unnecessary to name ESPs as respondents. CCA Parties raise a concern that by naming CCAs as respondents to this proceeding, the Commission would be asserting greater jurisdiction over CCAs than it has previously done. Like the ESP parties, CCA Parties are concerned that we will require CCAs to submit long term procurement plans for review. Several parties raise concerns about the confidentiality of data that ESPs and CCAs will be asked to submit.

Consistent with D.04-01-050 and D.04-07-037, and in response to TURN's comments, we will modify the draft decision's conclusion of law and Ordering Paragraph 1 to specify that registered ESPs and CCAs are subject to the Commission's jurisdiction with respect to resource adequacy requirements, and should be named respondents.

² AReM filed its comments one day out of time due to an unforeseen problem with a courier service. AReM timely served its comments, and no party is prejudiced by the delayed filing. For good cause shown, AReM's motion to accept filing of comments one day late will be granted.

We appreciate the voluntary and cooperative participation of ESPs and CCAs in the resource adequacy portion of this proceeding but we nevertheless believe it is appropriate to name individual registered ESPs and CCAs as respondents for the reasons discussed above. Even though we have no particular reason to expect individual entities who have not participated in this proceeding to be any less cooperative than those who have, prudence dictates that we take a cautious and therefore mandatory approach.

We decline to establish a new, separate proceeding that is specific to resource adequacy requirements for ESPs and/or CCAs. We believe such an approach could inhibit our efforts to coordinate the development of a unified resource adequacy program and could lead to unacceptable delays in implementation of the program. However, we hereby state our intent that ESPs and CCAs are respondents with respect to the resource adequacy requirements portion of this rulemaking and not with respect to other portions of the proceeding that are not applicable to resource adequacy requirements. In particular, notwithstanding concerns of ESP and CCA parties to the contrary, we do not intend in this proceeding to establish requirements that ESPs or CCAs submit long-term procurement plans to the Commission for approval.

We decline to exempt currently inactive but registered ESPs from today's decision. We proceed with the assumption that a currently inactive ESP could serve load in the future. Just as this order requires that any newly registered ESP or CCA become a respondent, it is appropriate to require any currently registered ESP that might in the future serve load to be a respondent. We note that in issuing directives for ESPs to submit data, the Assigned Commissioner or ALJ can craft procedures to minimize any burden such requirements may have on inactive ESPs. Similarly, we expect that the Assigned Commissioner or ALJ,

in directing data submittals by LSEs, to craft appropriate confidentiality protections for LSEs and their customers.

5. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Mark S. Wetzell is the assigned ALJ for the RAR portion of this proceeding.

Finding of Fact

There is a need for submission of load forecast data by LSEs before the target Phase 2 decision date of June 30, 2005.

Conclusion of Law

ESPs and CCAs that are registered to serve retail customers within the service territory of one or more of the three respondent investor-owned utilities (OIR, Ordering Paragraph 2) are subject to the jurisdiction of this Commission with respect to resource adequacy requirements and should be named respondents in this proceeding.

O R D E R

IT IS ORDERED that:

1. Each Energy Service Provider (ESP) and each Community Choice Aggregator (CCA) that is registered to serve retail customers within the service territory of one or more of the three respondent investor-owned utilities is subject to the jurisdiction of this Commission with respect to resource adequacy requirements and is hereby named as a respondent to this proceeding.

2. The Executive Director shall cause a copy of the April 1, 2004 Order Instituting Investigation (OIR) and this Order Modifying the OIR to be served on each ESP listed in Appendix A and parties to R.03-10-003 as well as parties to this proceeding. Further, until this proceeding is closed by order of the Commission, the Executive Director shall cause a copy of the OIR and this Order to be served on each newly registered ESP and CCA.

3. The Motion of the Alliance for Retail Energy Markets to accept filing of comments one day late is granted.

4. This proceeding remains open.

This order is effective today.

Dated March 17, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

Comr. Grueneich recused herself from this agenda item and was not part of the quorum in its consideration.

APPENDIX A

ENERGY AMERICA, LLC (1341) 263 TRESSER BLVD., ONE STAMFORD PLAZA 8 TH FLOOR STAMFORD, CT 06901	CORAL POWER L.L.C. (1360) 4445 EASTGATE MALL, SUITE 100 SAN DIEGO, CA 92121
BP ENERGY COMPANY (1366) 501 WESTLAKE PARK BLVD. HOUSTON, TX 77079	PILOT POWER GROUP, INC. (1365) 9320 CHESAPEAKE DRIVE, SUITE 112 SAN DIEGO, CA 92123
APS ENERGY SERVICES COMPANY, INC. (1361) 400 E. VAN BUREN STREET, SUITE 750 PHOENIX, AZ 85004	COMMONWEALTH ENERGY CORPORATION (1092) ELECTRICAMERICA 600 ANTON BOULEVARD, SUITE 2000 COSTA MESA, CA 92626
NEW WEST ENERGY CORPORATION (1063) NEW WEST ENERGY PO BOX 61868, MAILING STATION ISB 665 PHOENIX, AZ 85082-1868	AOL UTILITY CORP. (1355) 12752 BARRETT LANE SANTA ANA, CA 92705
CONSTELLATION NEW ENERGY, INC. (1359) 350 SOUTH GRAND AVENUE, SUITE 2950 LOS ANGELES, CA 90071	CITY OF CORONA DEPARTMENT OF (1367) WATER AND POWER 730 CORPORATION YARD WAY CORONA, CA 92880
MICHAEL MAZUR (1350) 3 PHASES ELECTRICAL CONSULTING 2100 SEPULVEDA BLVD., SUITE 15 MANHATTAN BEACH, CA 90266	CALPINE POWERAMERICA-CA, LLC (1392) 4160 DUBLIN BLVD. DUBLIN, CA 94568
QUIET LLC (1368) QUIET ENERGY 3311 VAN ALLEN PL. TOPANGA, CA 90290	MODESTO IRRIGATION DISTRICT (1151) MODESTO IRRIGATION DIST. MID. WATER 1231 ELEVENTH STREET P.O. BOX 4060-95352 MODESTO, CA 95354
AMERICAN UTILITY NETWORK (A.U.N.) (1158) 10705 DEER CANYON DRIVE ALTA LOMA, CA 91737	
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(END OF APPENDIX A)